

IN RE:) In Proceedings
) Under Chapter 11
MELVERN C. NOLL and)
ANN M. NOLL,) No. BK 85-50132
)
Debtors.)

O R D E R

This matter is before the Court on debtors' objection to an amended proof of claim filed by Eagle Bank and on debtors' Petition to Interpret Amended Plan of Reorganization.

The debtors filed a joint petition under Chapter 11 of the Bankruptcy Code on April 22, 1985. On Schedule A-2 of the petition they listed a secured debt as being owed to Alvin H. Noll, Sr. and Edna E. Noll under Trust Agreement with Eagle Bank in the amount of \$34,728.20 plus interest. The debt was based on a note executed by debtors on January 20, 1981 in favor of Alvin and Edna Noll for \$33,728.29 plus 4% interest per annum on the unpaid balance. The note was secured by a second mortgage on a certain piece of real estate.

After execution, the note and mortgage were assigned and transferred in equal shares to separate trusts wherein Alvin Noll, Sr. and Edna Noll were the settlors and Eagle Bank was the trustee. The trusts provided that upon the death of both settlors, Melvern Noll, one of the debtors, was to receive 20.5% of the Alvin Noll, Sr. Trust and 20% of the Edna Noll Trust. Alvin Noll, Sr. died in 1984 and Edna Noll died on August 7, 1986.

On July 2, 1986 debtors filed their amended plan of reorganization, which showed the amount owed to trustee Eagle Bank as \$37,440.65. Eagle Bank filed a ballot accepting the amended plan on August 13, 1986. The provision in the Plan which relates to this debt states as follows:

The debtors owe the sum of \$37,440.65 plus interest to Eagle Bank as Trustee under Trust Agreement with Alvin H. Noll, Sr. and Edna E. Noll. Any outstanding sums received with respect to the sale of the real estate hereinabove noted shall be paid to Eagle Bank as Trustee under Trust Agreement with Alvin H. Noll, Sr. and Edna E. Noll. In the event that the amount of sale is insufficient, then the trust noted above shall be and become a Class 6 creditor as defined herein.

The Plan was confirmed on August 20, 1986.

On May 5, 1987, Eagle Bank filed an amended proof of claim seeking to correct and increase the amount owed by debtors to \$42,339.36. The Bank states that it has filed the amended proof of claim in an attempt to correct an error in computation which resulted in the prior figure of \$37,440.65 being approved in the Plan.

A bankruptcy court may allow an amendment to a proof of claim when the purpose of the amendment is to cure a defect in the claim as originally filed or to describe the claim with greater particularity. In re Vlavianos, 71 B.R. 789, 794 (Bankr. W.D. Va. 1986). However, an amended proof of claim should not be allowed if it would cause undue prejudice to an opposing party. Id.; In re White Motor Corporation, 59 B.R. 286, 289 (Bankr. N.D. Ohio 1986).

The Court finds that there is undue prejudice in the present case. Debtors' amended plan was approved by Eagle Bank on August 13,

1986. Debtors relied on the figures supplied by Eagle Bank to formulate their plan and Eagle Bank had no objection with the \$37,440.65 figure debtors were said to have owed. Now, almost a year later, Eagle Bank says that the figure was in error and that a new, higher figure is the correct amount debtors owe.

The debtors would be unduly prejudiced if the bank were allowed, at this late date, to file an amended proof of claim, particularly where the bank had ample opportunity to object to the figure before the Plan was confirmed and instead waited nine months after confirmation to file its amended claim. Accordingly, the Court sustains debtors' objection to Eagle Bank's amended proof of claim.

In their Petition to Interpret Amended Plan, debtors ask the Court to determine whether Eagle Bank, as Trustee, can offset the inheritance debtor Melvern C. Noll is to receive from the Alvin Noll, Sr. and Edna Noll Trusts against the amount the debtors jointly owe the trusts.

The right of a creditor to effect an offset in bankruptcy is set forth in §553(a), which provides in pertinent part:

Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case...

The only requirements for an offset under Section 553 are: (1) the debts and claims must be mutual, and (2) they must be pre-

petition. In re Braniff Airways, Inc., 42 B. R. 443, 447 (Bankr. N.D. Texas 1984). A creditor may not offset its prepetition claims against a debt owed to debtor which came into existence after the filing of the petition. Cooper-Jarrett, Inc. v. Central Transport, Inc., 726 F.2d 93, 96 (3rd Cir. 1984); Westinghouse Electric Corp. v. Fidelity & Deposit Co., 63 B.R. 18, 20 (E.D. Pa. 1986).

In the present case, the debt owed by Eagle Bank, as Trustee of the Alvin Noll, Sr. and Edna Noll Trust Agreements, to Melvern Noll accrued when Edna Noll died, which was well after the filing of the petition. Therefore, Eagle Bank cannot use the funds that Melvern Noll is to inherit from the trusts to offset the amounts that debtors owe the trusts.

IT IS ORDERED that debtors' objection to amended proof of claim is SUSTAINED.

IT IS FURTHER ORDERED that trustee Eagle Bank may not use the funds owed debtor Melvern Noll to offset the amounts that debtors jointly owe the Alvin Noll, Sr. and Edna Noll Trusts.

_____/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: October 15, 1987